

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

MATTHEW CHRISTOPHER HANER,

Plaintiff,

v.

WAL-MART STORES TEXAS, LLC,
WAL-MART STORES, INC., and JOHN
DOE.

Defendant.

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Cause No. 3:22-CV-00019

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, WAL-MART STORES TEXAS, LLC and WAL-MART STORES, INC. (“Walmart”) and file this Notice of Removal pursuant to 28 U.S.C. § 1441 based on diversity of citizenship jurisdiction, and in support of the same, would respectfully show the Court as follows:

**I.
FACTUAL BACKGROUND**

1. This lawsuit was originally filed on under Cause No. 2021DCV2440, and styled *Matthew Christopher Haner v. Wal-Mart Stores Texas, LLC, Walmart Stores, Inc., and John Doe*, in the 327th District Court, El Paso County, Texas (hereinafter the “State Court Action”).

2. A true and correct copy of the docket sheet from the State Court Action is attached to this Notice as Exhibit A. Pursuant to 28 U.S.C § 1446(a) a true and correct copy of all process, pleadings and orders in the State Court Action are being attached to this Notice as Exhibit B.

3. Plaintiff asserts a Texas state law claim for premises liability, alleging that “Plaintiff was struck by a motorized shopping cart operated by John Doe.” *See* Exhibit B, Pl.’s Orig. Pet. at ¶ III.

4. Plaintiff alleges he suffered bodily injuries, increased pain to his legs and back, impairment to his body. Plaintiff further alleges actual damages in an amount of \$200,000.00 but no more than \$1,000,000.00. *Id.* at ¶¶ VII.

II. BASIS FOR REMOVAL

5. This case is being removed based on diversity of citizenship jurisdiction under 28 U.S.C. § 1332 and pursuant to 28 U.S.C. § 1441(a). Any civil action brought in a State court of which the district courts of the United States have original jurisdiction may be removed by the defendants to the district court of the United States for the district and division embracing the place where such action is pending. 28 U.S.C. § 1441(a). The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of a State and citizens or subjects of a foreign state. 28 U.S.C. § 1332(a)(2).

6. Plaintiff was a Texas citizen at the time that he filed this lawsuit and is currently a Texas Citizen. *See* Exhibits C-D. Plaintiff has lived at 505 Candado Pl, El Paso, Texas 79912 for approximately the last 15 years. *Id.*

7. On the contrary, Defendant Walmart Stores, Inc. is not a Texas citizen. That is, Walmart Inc. is the new name of Wal-Mart Stores, Inc., (*See* Exhibit E, Texas Secretary of State Form 406, filed on Dec. 15, 2017 (indicating that Walmart Inc. is Wal-Mart Stores, Inc.'s new name), a corporation formed under the laws of the State of Delaware with its principal place of business in Arkansas. Walmart Stores Texas, LLC is a limited liability company which was formed under the laws of the State of Delaware and whose principal place of business is in Bentonville, Arkansas. Wal-Mart Real Estate Business Trust is the sole member of Walmart

Stores Texas, LLC. Wal-Mart Property Co. is the sole unit holder of Wal-Mart Real Estate Business Trust. Wal-Mart Stores East, LP is the sole owner of Wal-Mart Property Co. Wal-Mart Stores East, LP is a limited partnership which was formed under the laws of the State of Delaware and whose principal place of business is in Bentonville, Arkansas. WSE Management, LLC is the sole general partner, and WSE Investment, LLC is the sole limited partner, of Wal-Mart Stores East, LP. WSE Management, LLC and WSE Investment, LLC are both limited liability companies which were formed under the laws of the State of Delaware and whose principal place of business is in Bentonville, Arkansas. The sole member of WSE Management, LLC and WSE Investment, LLC is Wal-Mart Stores East, LLC. Wal-Mart Stores East, LLC is a limited liability company whose principal place of business is in Bentonville, Arkansas. Wal-Mart Stores, Inc. is the sole member of Wal-Mart Stores East, LLC. Wal-Mart Stores, Inc. is a corporation which was formed under the laws of the State of Delaware and whose principal place of business is in Bentonville, Arkansas. *See* Exhibit F, Affidavit of Geoffrey W. Edwards.

8. As to Defendant John Doe, defendants sued under fictitious names are disregarded for purposes of determining diversity jurisdiction. *See* 28. U.S.C. § 1441(b)(1).

9. Thus, Plaintiff and Walmart are completely diverse.

9. Further, Plaintiff seeks \$200,000 but no more than \$1,000,000, an amount over the \$75,000 threshold under 28 U.S.C. 1332(a). *See* Exhibit B, Pl.'s Orig. Pet. at ¶ VI. Accordingly, the amount in controversy requirement of 28 U.S.C. 1332(a) is also satisfied.

10. Therefore, because Plaintiff and Walmart are completely diverse, and because Plaintiff seeks damages in an amount over \$75,000.00, this Honorable Court has jurisdiction over Plaintiff's claim.

III. PROCEDURE

11. If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable. 28 U.S.C. § 1446(b)(3). A case may not be removed under subsection (b)(3) on the basis of jurisdiction conferred by section 1332 more than one year after the commencement of the action, unless the district court finds that the plaintiff has acted in bad faith in order to prevent a defendant from removing the action. *Id.*

12. Plaintiff filed the State Court Action on July 15, 2021, Exhibit B, Pl.'s Orig. Pet. Defendant was served on July 28, 2021. *See* Exhibit G, CT Corporation Service of Process Transmittal.

13. Defendant served Plaintiff with Interrogatories and Requests for Admission for the sole purpose of ascertaining Plaintiff's citizenship on November 9, 2021. *See* Exhibits H-I. Plaintiff served his answers/responses to Defendant's discovery requests on December 9, 2021. *See* Exhibits C-D. It was on this date that for, the first time, it was ascertainable that Plaintiff was a citizen of Texas. *Id.* Accordingly, because less than thirty (30) days have elapsed since this date, Defendants' Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b)(3).

14. Venue of this removed action is proper in this Honorable Court pursuant to 28 U.S.C. § 1441(a) as El Paso is the District and Division where the State Court Action is pending.

15. Pursuant to 28. U.S.C. § 1446(d), Defendant will promptly give all parties written notification of the filing of this Notice, and will also promptly file a copy with the District Clerk of El Paso County, Texas where the State Court Action is currently pending.

**IV.
JURY DEMAND**

16. Defendants asked for a state court a jury trial and asks for a jury trial in this Court.

WHEREFORE, PREMISES CONSIDERED, Defendants pray that this matter be placed on the Court's docket and for any other and further relief to which they may be justly entitled at law or in equity.

Respectfully submitted,

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Attorneys for Defendant Walmart

CERTIFICATE OF SERVICE

In compliance with the Federal Rules of Civil Procedure, I certify that on the 6th day of January 2022, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to counsel for Plaintiff, Tiffany N. Joudi, Scherr & Legate, PLLC, 109 N. Oregon, 12th Floor, El Paso, Texas 79901.

/s/ Laura Enriquez
Laura Enriquez